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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

THE PEOPLE,

Plaintiff and Respondent,

v.

JOSHUA BONAPARTE,

Defendant and Appellant.

B211191

(Los Angeles County Super. Ct.
No. BA340126)

APPEAL from a judgment of the Superior Court of Los Angeles County, Craig E. Veals, Judge. Affirmed.

J. Kahn, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Joseph P. Lee, Michael R. Johnson and Allison H. Chung, Deputy Attorneys General, for Plaintiff and Respondent.

The jury found defendant Joshua Bonaparte guilty of the murder of William Course in violation of Penal Code section 187, subdivision (a)¹ and the attempted murder of Tyisha Clark (§§ 664, 187, subd. (a)). The jury found defendant personally used a firearm in the commission of the offenses (§ 12022.53, subds. (b)-(d)). The jury also found true allegations the murder was committed for the benefit of a criminal street gang (§ 186.22, subd. (b)(1)(C)) and the special circumstance that defendant committed the murder by discharging a firearm from a motor vehicle with the intent of killing his victim (§ 190.2). The trial court imposed life imprisonment without the possibility of parole, plus 25 years for the personal firearm use enhancement for the murder. It also imposed a consecutive sentence of 15 years to life for the attempted murder, plus 25 years for the firearm enhancement.

In his timely appeal, defendant contends the admission of a reference to a third party confession violated defendant's Sixth Amendment right to confront adverse witnesses. We affirm.

STATEMENT OF FACTS

On November 16, 2005, Deron Wofford saw defendant commit the fatal shooting of his friend, Course. The shooting took place within territory claimed by the East Coast Crips street gang. Wofford was not a gang member, but he had lived in the neighborhood his entire life. At the time of the shooting, he was living at his grandmother's house on 62nd Street, next to the shooting location. Before the shooting, Wofford and Course had been playing video games in Wofford's grandmother's garage. Wofford walked to a nearby market. On the way, he stopped to talk and get a cigarette from an acquaintance in a parked car. He saw the other victim, Clark. She was conversing with Course in front of the grandmother's gate.

¹ All further statutory references are to the Penal Code, unless noted otherwise.

Wofford saw defendant's dark Cadillac approaching. No one in the car was familiar to Wofford. The Cadillac was moving very slowly and had almost stopped. Wofford stared at the passenger, whom he later identified as defendant. Defendant nodded his head, fired a shot at Wofford, paused, and fired some more shots at Course and Clark. After the shooting, Wofford found Course and Clark lying on the ground. Course died from the gunshot wound to his back.

Wofford subsequently pleaded guilty to possessing a firearm and narcotics in an unrelated incident. It was stipulated that Wofford would testify that the gun he possessed was a revolver with a two inch barrel that he purchased for \$15 from a transient for his protection following the Course/Clark shooting. He was sentenced to 180 days in jail and placed on probation. He was not offered any benefit in exchange for testifying in defendant's trial, nor had he received any promise of future benefits. On December 2, 2005, while in custody for those offenses, Wofford identified photographs of defendant and his car.² Wofford moved away from the neighborhood due to his fear of violence—there was a drive-by shooting of his grandmother's residence.

Clark was walking eastbound on 62nd Street in Los Angeles as she approached the location where the shooting occurred. She was familiar with that neighborhood because she had grown up there. The East Coast Crips claimed the area as its territory. The East Coast Crips were rivals of the Five Deuce Broadway Gangster Crips, who also operated in her neighborhood. Royalty Market was located near the intersection of 62nd Street and San Pedro Boulevard. As Clark walked past the market, toward Avalon Boulevard, she saw Course, who was a longtime acquaintance. After greeting Course, his cell phone rang and he answered it. Clark and Course were standing on the sidewalk. Her back was to the street; Course was facing the street. Suddenly, she heard a gunshot from the street and turned to see defendant's Cadillac. A light skinned African-American male was in the front passenger seat. He fired three or four more shots. As she turned and ran away,

² When previously interviewed on the day of the shooting, however, Wofford was shown various photo spreads, but did not identify defendant.

she was struck in her left buttock with a bullet that passed through her right buttock. She did not see Course get shot. Clark waited for an ambulance to arrive. She was treated in the hospital and released that day. At the preliminary hearing in this matter, Clark identified Eddie “E.J.” Hunter as the shooter.

A casing from a semiautomatic firearm was found at the scene. It was fired from a Glock handgun found just outside a residence on West 50th Street two days after the shooting. When police officers arrived at the residence in response to a complaint, the Glock was one of several handguns thrown out of the residence. The officers found narcotics and other contraband at the location. Hunter, who was inside the residence, was detained. Defendant’s Cadillac was impounded on November 20, 2005, near Oceanside. Melvin “Zip” Young, the driver, was cited for a traffic violation. Documents, including 10 envelopes addressed to defendant, were found in the car’s trunk.

Detective Thompson interviewed defendant on December 28, 2005. Defendant said that he and his friend, Young, had been living in Oceanside. Defendant bought the Cadillac with a person named Kevin; they shared the cost equally. The car was purchased for defendant’s use and for that of his “homies.” On the day of the shooting, Young drove defendant to Los Angeles in the Cadillac. Defendant sat in the front passenger seat. Defendant knew that Young was affiliated with a street gang, either Five or Six Deuce, or “something like that.” Defendant initially denied being in the Cadillac at the time of the shooting, asserting he had been dropped off beforehand. He changed his story, however, when the detective said the police had additional evidence concerning the shooting and that Young had confessed. Defendant admitted he was one of four persons in the car. Young was driving and defendant was seated behind Young. It was Hunter in the front passenger seat who fired the shots. As Young approached the intersection, a person standing at the corner stared at the persons in the car, pointed a gun at them, and fired. Hunter returned the fire.³

³ On cross-examination, the detective said that defendant identified Hunter’s photograph as being that of the shooter.

Defendant further explained that prior to the shooting, as they were driving toward a swap meet, an Escalade pulled up next to them and someone inside pointed a gun at them. Young drove away, but the others in the car decided they should retaliate against the persons in the Escalade. Young drove to a residence to pick up a gun. Defendant remained in the Cadillac and waited. The others returned to the car within 20 minutes. Defendant did not see any firearm. Young told defendant to get into the back seat because they were “going to go handle business.” Defendant said he understood that as meaning they were going to “beat” the person in the Escalade. He never saw a gun and never would have joined them if he thought there would be a shooting. They drove off in search of the Escalade. Sometime after that, the shooting occurred. The person standing on the corner initiated the confrontation and fired two or three shots, but failed to hit the Cadillac or anyone inside. After the shooting, Young drove back to the residence, where they dropped off Hunter and the other passenger. Young and defendant drove back to Oceanside, stopping first for food at McDonald’s.

Officer Kevin Raines testified as the prosecution’s gang expert. Active “hard-core” gang members will typically take part in gang activities and recruit new members after moving out of the gang’s territory. Gang members show their allegiance to a gang by wearing gang-related tattoos. A community gun is a weapon held in a location that is accessible to gang members when needed. The 62nd Street location of the shooting incident was deep in the heart of territory claimed by the East Coast Crips, rivals of the Broadway Gangster Crips. Young was a member of the Five Deuce Broadway Gangster Crips, as was Hunter, who had a gang-related tattoo. Course was an “associate” of the East Coast Crips. Based on a hypothetical version of facts reflective of the prosecution case, which assumed all four persons in the car were members of the same gang, the expert opined that the drive-by shooting would have been committed to benefit the gang. It would not have been likely that such a serious crime would have been committed with any non-gang member inside the car.

In the defense case, Officer Jeffrey Stapleton testified that he interviewed Wofford on November 16, 2005, at 2:30 p.m. Wofford told him that the Cadillac’s four occupants

were “staring straight ahead,” and it was the person in the right side rear seat who fired the gunshots. Wofford did not review the officer’s report containing those statements.

DISCUSSION

Defendant contends the admission of Detective Thompson’s reference to Young’s “full confession” violated defendant’s Sixth Amendment right to confront adverse witnesses under *Crawford v. Washington* (2004) 541 U.S. 36 (*Crawford*), despite the fact that the challenged testimony was not admitted for its truth, but for the limited purpose of assessing the credibility of defendant’s statements. As we explain, because the testimony was not admitted for its truth and did not directly incriminate defendant, its admission did not implicate defendant’s rights under the confrontation clause.

During redirect examination of Detective Thompson, the prosecutor asked questions concerning the interview with defendant, including whether the two detectives “were very clear” in telling defendant “that he was not only suspected of murder but [of] being the trigger man in the murder.” The defense objected. In a sidebar discussion, defense counsel explained that he objected to any attempt by the prosecution to elicit statements by persons other than defendant concerning defendant’s involvement in the shooting incident. The prosecutor responded that he did not intend to introduce third party statements, but to show that defendant changed his story to admit being present only after the detectives told defendant they had obtained a “full confession” from Young. Defense counsel maintained that because the question was to be asked after the reference to defendant’s being accused of being the “trigger man,” the reference to Young’s confession implied the third party’s assertion that defendant was the shooter. The prosecutor repeated that he was not trying to elicit any of Young’s actual statements, but merely wanted to present evidence of what motivated defendant to change his story.

Defense counsel clarified that the objection was based on defendant’s rights under the *Aranda/Bruton* rule (*People v. Aranda* (1965) 63 Cal.2d 518 (*Aranda*); *Bruton v.*

United States (1968) 391 U.S. 123 (*Bruton*)),⁴ which provides that a defendant is denied his Sixth Amendment right of confrontation when the trial court admits a nontestifying codefendant's confession that names and incriminates the defendant at their joint trial. (*Bruton, supra*, at pp. 124-126, 135-136.) The court found *Aranda/Bruton* inapplicable because defendant was not being jointly tried with an accomplice. Moreover, there was no inculpatory third party statement being offered for its truth—the testimony would be admitted to explain its effect on the listener, defendant. A break was taken to allow the defense the opportunity to review the relevant interview transcript. In further discussion outside the jury's presence, the court made it clear that the reference to Young's confession would be admissible solely as to whether it precipitated the change in the version of events related by defendant. The court found that the testimony supported the reasonable inference that defendant had been dishonest in initially denying his presence at the time of the shooting. The court overruled the defense objection and stated that it would admonish the jury as to the limited basis for which the testimony was being offered.

When trial recommenced, the court instructed the jurors that they would hear about statements by Young: "These statements, as well as the surrounding circumstances, are not offered as evidence of the truth of the matters that are purported. Instead, you are to consider them only in ascertaining the credibility—actually the impact or [e]ffect upon the listener, namely the defendant, in assessing his credibility with respect to statement that he subsequently made." The prosecutor asked Detective Thompson to recount various interview statements in which defendant denied being present at the time of the shooting, despite the detectives' assertions of disbelief and their references to evidence such as the videotape from the market. In response to the

⁴ The Attorney General argues defendant forfeited his *Crawford*-based confrontation clause claim by failing to object on that ground below. We note that the *Aranda/Bruton* objection implicated the confrontation clause and that the trial court also considered the constitutional objection in terms of hearsay. Accordingly, the appellate claim was fairly presented below.

prosecutor's inquiry, the detective confirmed that defendant changed his story to admit being present in the car after defendant was told: "[W]e've already talked to Melvin [Young]. Melvin's under arrest. Melvin gave us a complete confession."

On appeal, defendant repeatedly attempts to premise the supposed confrontation clause violation on the admission of a statement by Young that identified defendant as the shooter. As our summary of the trial proceedings makes plain, however, no such statement was admitted. The detective's reference to Young's statement was merely that it was a "full confession." There was no mention of any other participant and the reference does not implicate defendant as the shooter either on its face or by clear inference.

Accordingly, the *Aranda-Bruton* aspect of defendant's confrontation clause challenge must fail. In *Bruton*, the United States Supreme Court held that a confrontation clause violation under the Sixth Amendment occurs when the trial court admits a nontestifying codefendant's confession that names and incriminates the defendant at their joint trial, even where the jury is instructed to consider the confession only against the codefendant. (*Bruton, supra*, 391 U.S. at pp. 124-126, 135-136.) The Supreme Court reasoned that, even when so instructed, jurors cannot be expected to ignore the statements of one defendant that are "powerfully incriminating" as to another defendant. (*Id.* at pp. 135-136.) The *Bruton* holding was qualified by *Richardson v. Marsh* (1987) 481 U.S. 200 (*Richardson*), which held that *Bruton* "extends only to confessions that are not only 'powerfully incriminating' but also 'facially incriminating' of the nondeclarant defendant. [Citation.] The [*Richardson*] court held that a defendant's rights under the confrontation clause are not violated by the admission in evidence of a codefendant's confession that has been redacted 'to eliminate not only the defendant's name, but any reference to his or her existence,' even though the confession may incriminate the defendant when considered in conjunction with other evidence properly admitted against the defendant. [Citation.]" (*People v. Fletcher* (1996) 13 Cal.4th 451, 455-456.) Here, not only was there no joint trial, but Young's statement was neither powerfully

incriminating nor facially incriminating as to defendant. (See *People v. Carter* (2003) 30 Cal.4th 1166, 1208 (*Carter*).)

Defendant's attempt to frame the issue in terms of *Crawford* fares no better because the *Crawford* court made it clear that a defendant's confrontation rights apply to testimonial statements offered for their truth. (*Crawford, supra*, 541 U.S. at p. 59, fn. 9, ["The [Confrontation] Clause . . . does not bar the use of testimonial statements for purposes other than establishing the truth of the matter asserted. [Citation.]"]; see *Tennessee v. Street* (1985) 471 U.S. 409, 413-414; *People v. Sisneros* (2009) 174 Cal.App.4th 142, 153.)

Our Supreme Court's decision in *Carter, supra*, 30 Cal.4th 1166 is on point. There, during the penalty phase cross-examination of the defendant, the prosecutor questioned the defendant about his extrajudicial statements to police in which he initially told police he had not been present at the shootings, but changed his story after being shown statements by his co-perpetrators identifying him as the shooter. (*Id.* at p. 1207.) In rejecting the defendant's confrontation clause challenge, the *Carter* court explained, "the evidence did not constitute inadmissible hearsay: The prosecutor's apparent aim in inquiring into defendant's knowledge of [co-perpetrators'] statements was not to establish the truth of the matters asserted therein but to shed light on defendant's state of mind in admitting his own involvement in the [underlying] offenses and the credibility of his trial testimony that his admission was motivated by a desire to bring forth the truth." (*Id.* at p. 1209, fn. omitted, citing *Tennessee v. Street, supra*, 471 U.S. at p. 414.) Of course, defendant's situation is even weaker than that of the defendant in *Carter* because the reference to Young's confession did not identify defendant as the shooter.

Defendant nevertheless contends that, despite the trial court's clear instruction that the challenged testimony was not to be considered for its truth, the nature of the testimony was so inherently damaging and prejudicial that the jury could not be expected to follow the limiting instruction. We disagree. Not only was the trial court's contemporaneous admonition to the jury unambiguous and easy to follow, but the trial court instructed the jury pursuant to CALJIC No. 2.09 that "[c]ertain evidence was

admitted for a limited purpose. [¶] At the time this evidence was admitted you were instructed that it could not be considered by you for any purpose other than the limited purpose for which it was admitted. [¶] Do not consider this evidence for any purpose except the limited purpose for which it was admitted.”⁵

“‘[It is] the almost invariable assumption of the law that jurors follow their instructions.’ [Citation.] ‘[We] presume that jurors, conscious of the gravity of their task, attend closely the particular language of the trial court’s instructions in a criminal case and strive to understand, make sense of, and follow the instructions given them.’ [Citations.]” (*United States v. Olano* (1993) 507 U.S. 725, 740; *People v. Romo* (1975) 14 Cal.3d 189, 195; *People v. Sisneros, supra*, 174 Cal.App.4th at pp. 152-153.) There is no reason to disregard that presumption here.

The authorities on which defendant relies are not availing. In *Thomas v. Hubbard* (9th Cir. 2002) 273 F.3d 1164, the federal appellate court held a confrontation clause violation could not have been cured by an admonition not to consider the testimony for its truth because the statements were so highly prejudicial—statements that provided evidence that the defendant possessed a weapon and a motive to use it on the victim, along with a statement that the defendant had a violent confrontation with the victim on the same day as the fatal stabbing. (*Id.* at pp. 1172-1173.) Nothing remotely similar occurred here in defendant’s trial.⁶ Similarly, in *People v. Song* (2004) 124 Cal.App.4th 973, the court held that the initial admission of testimony in violation of *Aranda/Bruton*

⁵ We note with regard to the reference to Young’s “full confession,” the jury was instructed with CALJIC No. 2.11.5: “There has been evidence in this case indicating that a person other than a defendant was or may have been involved in the crime for which that defendant is on trial. [¶] There may be many reasons why that person is not here on trial. Therefore, do not speculate or guess as to why the other person is not being prosecuted in this trial or whether he has been or will be prosecuted. Your sole duty is to decide whether the People have proved the guilt of the defendant on trial.”

⁶ “In any event, we are not bound by the decisions of lower federal courts.” (*People v. Mejia* (2007) 155 Cal.App.4th 86, 99, citing *People v. Avena* (1996) 13 Cal.4th 394, 431.)

and *Crawford* could not be cured by the trial court's subsequent admonition not to consider the testimony. (*People v. Song, supra*, at pp. 981-982.) In contrast to the situation in *Song*, the limited admission of the detective's reference to Young's confession did not violate the confrontation clause.

DISPOSITION

The judgment is affirmed.

KRIEGLER, J.

We concur:

TURNER, P. J.

ARMSTRONG, J.